



General Assembly

February Session, 2002

Raised Bill No. 5717

LCO No. 2426

Referred to Committee on Public Health

Introduced by:
(PH)

AN ACT CONCERNING THE SALE OF NONPROFIT HOSPITALS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-486a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2002*):

3 (a) No nonprofit hospital shall enter into an agreement to transfer a
4 material amount of its assets or operations or a change in control of
5 operations to a person that is organized or operated for profit without
6 first having [notified and, if applicable, received approval of the
7 agreement by] applied to and if applicable, received approval from the
8 Commissioner of Health Care Access and the Attorney General
9 pursuant to sections 19a-486 to 19a-486h, inclusive, as amended by this
10 act, and [his] the Attorney General's authority under section 3-125.
11 Any agreement without the approval required by sections 19a-486 to
12 19a-486h, inclusive, as amended by this act, shall be void.

13 (b) Prior to any transaction described in subsection (a) of this
14 section, the nonprofit hospital shall [give notice to] file an application
15 with the commissioner and the Attorney General by serving it on them
16 by certified mail, return receipt requested. Such [notice] application

17 shall contain: (1) The name and address of the nonprofit hospital; (2)
18 the name and address of the purchaser; (3) a description of the terms of
19 the proposed agreement; (4) copies of all contracts, agreements and
20 memoranda of understanding relating to the proposed agreement;
21 [and] (5) a fairness evaluation by an independent person who is an
22 expert in such agreements, that includes an analysis of each of the
23 criteria set forth in section 19a-486c, as amended by this act; and (6)
24 documentation that the hospital exercised the due diligence required
25 by subdivision (2) of subsection (a) of section 19a-486c, as amended by
26 this act, including disclosure of the terms of any other offer to transfer
27 assets or operation or change control of operation received by the
28 nonprofit hospital and the reason for rejection of such offer. The notice
29 shall be subject to disclosure pursuant to section 1-210, as amended.

30 (c) No later than thirty days prior to the filing of an application
31 pursuant to this section, a nonprofit hospital shall meet with the
32 Attorney General and the commissioner, or their designees, to discuss
33 the substantive and procedural requirements of sections 19a-486a to
34 19a-486h, inclusive, as amended by this act.

35 ~~[(c)]~~ (d) Not later than ten days after receipt of a notice under this
36 section, the commissioner shall publish a summary of such agreement
37 in a newspaper of general circulation where the nonprofit hospital is
38 located.

39 ~~[(d)]~~ (e) Any person may seek to intervene in the proceedings under
40 sections 19a-486 to 19a-486h, inclusive, as amended by this act,
41 pursuant to section 4-177a.

42 Sec. 2. Section 19a-486b of the general statutes is repealed and the
43 following is substituted in lieu thereof (*Effective October 1, 2002*):

44 (a) Not later than twenty days after receipt of [a notice of a
45 proposed agreement] the application required under section 19a-486a,
46 as amended by this act, the Attorney General shall determine whether
47 the agreement involves a material amount of the assets or operations

48 or a change in control of operations of the nonprofit hospital and shall
49 notify the Commissioner of Health Care Access of such determination.
50 If [he] the Attorney General determines that the agreement involves a
51 change in control of operations or the amount of assets or operations
52 involved is material, then [he] the Attorney General shall conduct a
53 review of the proposed agreement.

54 (b) Not later than one hundred twenty days after receipt of the
55 [notice] application required by section 19a-486a, as amended by this
56 act, the Attorney General shall review the agreement and shall
57 approve the agreement, with or without modifications, or disapprove
58 the agreement. The one hundred twenty days may be extended by
59 agreement of the Attorney General, the commissioner, the nonprofit
60 hospital and the purchaser.

61 (c) If the Attorney General initiates a proceeding to enforce a
62 subpoena pursuant to subsection (b) of section 19a-486c [to enforce a
63 subpoena] or subsection (c) of section 19a-486d, as amended by this
64 act, the one hundred [twenty days] twenty-day period or any
65 extension thereof shall be tolled with respect to the Attorney General
66 and the commissioner until the final court decision on the last pending
67 enforcement proceeding, including any appeal or time for the filing of
68 such appeal. Unless extended pursuant to this [subsection] section,
69 failure to take action on an agreement within one hundred twenty
70 days shall be deemed approval.

71 (d) The Attorney General and the commissioner shall jointly issue
72 their independent decisions on the application. Prior to the issuance of
73 their decisions, the Attorney General and the commissioner shall
74 discuss their proposed decisions and make every effort to eliminate
75 any conflict in the conditions for approval, if any. The commissioner's
76 decision shall also include a decision on the request for certificate of
77 need in accordance with the provisions of chapter 368z.

78 Sec. 3. Subsection (a) of section 19a-486c of the general statutes, as
79 amended by section 15 of public act 01-186, is repealed and the

80 following is substituted in lieu thereof (*Effective October 1, 2002*):

81 (a) The Attorney General shall disapprove a proposed agreement
 82 requiring [notice] an application under section 19a-486a, as amended
 83 by this act, as not in the public interest if the Attorney General
 84 determines that one or more of the following conditions exist: (1) The
 85 transaction is prohibited by Connecticut statutory or common law
 86 governing nonprofit entities, trusts or charities; (2) the nonprofit
 87 hospital failed to exercise due diligence in (A) deciding to transfer, (B)
 88 selecting the purchaser, (C) obtaining a fairness evaluation from an
 89 independent person expert in such agreements, or (D) negotiating the
 90 terms and conditions of the transfer; (3) the nonprofit hospital failed to
 91 disclose any conflict of interest, including, but not limited to, conflicts
 92 of interest pertaining to board members, officers, key employees and
 93 experts of the hospital, the purchaser or any other party to the
 94 transaction; (4) the nonprofit hospital will not receive fair market value
 95 for its assets, which, for purposes of this subsection, means the most
 96 likely price that the assets would bring in a sale in a competitive and
 97 open market under all conditions requisite to a fair sale, with the buyer
 98 and seller each acting prudently, knowledgeably and in their own best
 99 interest, and with a reasonable time being allowed for exposure in the
 100 open market; (5) the fair market value of the assets has been
 101 manipulated by any person in a manner that causes the value of the
 102 assets to decrease; (6) the financing of the transaction by the nonprofit
 103 hospital will place the nonprofit hospital's assets at an unreasonable
 104 risk; (7) any management contract contemplated under the transaction
 105 is not for reasonable fair value; (8) a sum equal to the fair market value
 106 of the nonprofit hospital's assets (A) is not being transferred to one or
 107 more persons to be selected by the superior court for the judicial
 108 district where the nonprofit hospital is located who are not affiliated
 109 through corporate structure, governance or membership with either
 110 the nonprofit hospital or the purchaser, and (B) is not being used for
 111 one of the following purposes: (i) For appropriate charitable health
 112 care purposes consistent with the nonprofit hospital's original purpose,
 113 (ii) for the support and promotion of health care generally in the

114 affected community, or (iii) with respect to any assets held by the
115 nonprofit hospital that are subject to a use restriction imposed by a
116 donor, for a purpose consistent with the intent of said donor; or (9) the
117 nonprofit hospital or the purchaser has failed to provide the Attorney
118 General with information and data sufficient to evaluate the proposed
119 agreement adequately, provided the Attorney General has notified the
120 nonprofit hospital or the purchaser of the inadequacy of the
121 information or data and has provided a reasonable opportunity to
122 remedy such inadequacy.

123 Sec. 4. Subsection (a) of section 19a-486d of the general statutes is
124 repealed and the following is substituted in lieu thereof (*Effective*
125 *October 1, 2002*):

126 (a) If the Attorney General determines, pursuant to section 19a-486b,
127 as amended by this act, that the proposed agreement involves a
128 material amount of the assets or operations or a change in control of
129 operations of the nonprofit hospital, then not later than one hundred
130 twenty days after receipt of [a notice of a proposed agreement] the
131 application required under section 19a-486a, as amended by this act,
132 the Commissioner of Health Care Access shall review the agreement
133 and shall approve the agreement, with or without modifications, or
134 disapprove the agreement. The one-hundred-twenty-day period may
135 be extended by agreement of the Attorney General, the commissioner,
136 the nonprofit hospital and the purchaser. [If the Attorney General, on
137 behalf of the commissioner, initiates a proceeding pursuant to
138 subsection (c) of this section to enforce a subpoena, the one-hundred-
139 twenty-day period shall be tolled until the final court decision on the
140 proceeding, including any appeal or any time for filing such appeal.]
141 Unless extended pursuant to this subsection or tolled pursuant to
142 section 19a-486b, as amended by this act, failure to take action on an
143 agreement within one hundred twenty days shall be deemed approval.

144 Sec. 5. Section 19a-486e of the general statutes is repealed and the
145 following is substituted in lieu thereof (*Effective October 1, 2002*):

146 Prior to making any decision to approve or disapprove a proposed
 147 agreement requiring [notice] an application under section 19a-486a, as
 148 amended by this act, the Attorney General and the Commissioner of
 149 Health Care Access shall jointly conduct one or more public hearings,
 150 one of which shall be in the primary service area of the nonprofit
 151 hospital. At least ten days before conducting the public hearing, the
 152 Attorney General and the commissioner shall provide notice of the
 153 time and place of the hearing through publication in one or more
 154 newspapers of general circulation in the affected community.

155 Sec. 6. Section 19a-486f of the general statutes is repealed and the
 156 following is substituted in lieu thereof (*Effective October 1, 2002*):

157 If the Commissioner of Health Care Access or the Attorney General
 158 disapproves a proposed agreement requiring [notice] an application
 159 under section 19a-486a, as amended by this act, or approves it with
 160 modifications, the nonprofit hospital or the purchaser may appeal such
 161 decision pursuant to chapter 54.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>

Statement of Purpose:

To amend statutes governing the sale of nonprofit hospitals.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]